IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9523 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHADBHAI A PATEL

Versus

STATE OF GUJARAT

Appearance:

Ms. Suman Pahwa for M/S THAKKAR ASSOC. for Petitioner

Mr. Udai Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2000

ORAL JUDGEMENT

#. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged his order of detention passed by the Police Commissioner, Surat City on 10.8.2000 in exercise of his powers conferred upon him vide section 3(1) of the Gujarat

Prevention of Anti social Activities Act 1985 (PASA Act for short). The petitioner came to be detained from 10.8.2000 in pursuance of the above said order.

#. The detaining authority took into consideration 4 offences registered against the petitioner under the Bombay Prohibition Act and the investigation carried into the above said 4 crimes registered against the petitioner. The detaining authority took into consideration the statements of 2 witnesses who offered their statements on assurance of anonymity of identity. From the above material, the detaining authority came to the conclusion that the petitioner was dealing in illegal liquor and selling the same so as to cause harm to the public health. The detaining authority also came to the conclusion that the petitioner was a hardened criminal and a head strong person. The detaining authority declared the petitioner to be a bootlegger within the meaning of section 2(b) of the PASA Act. Therefore, the authority passed the said detention order against the petitioner.

#. Ms. Suman Pahwa learned advocate on behalf of M/s Thakar Associates for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

#. Amongst the other grounds which were urged against the order of detention it was vehemently urged that the detaining authority failed to consider the aspect of less drastic remedy available to the detaining authority. It was urged that the detaining authority could have resorted to the remedy of cancellation of bail available to the detaining authority. But instead of resorting to the said remedy the detaining authority straight away passed this harsh order of detention against the petitioner. It was urged that this was obviously non application of mind by the detaining authority qua relevant aspect of the case.

#. In Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995(2) GLR 1134 and again in LPA No.1056 of 1999 in the case of Yunusbhai Hasanbhai Ghanchi vs. District Magistrate decided on 15.9.1999 the Division Bench of this Court ruled that provisions of section 437 (5) Cr.P.C. were far more wide in import and intent. This remedy was available to the detaining authority and the same was not resorted to. In both the above decisions, the bench of this Court quashed the order of detention on the ground of non application of mind by the detaining authority in not considering the less drastic remedy of cancellation of bail available to the detaining

authority. In the present case also the detaining authority has observed that in the crimes registered against the petitioner he was on bail. The detaining authority has further observed that the petitioner was likely to indulge in bootlegging act while he was on bail. However, the detaining authority failed to consider at all the import and intent of the provisions of cancellation of bail under section 437(5) Cr.P.C. Obviously this is non application of mind by the detaining authority in not considering the less drastic remedy available qua relevant aspect of the case resulting in vitiating the order of detention. For these reasons the order of detention is required to the set aside.

#. In the result the order of detention the order passed by the Police Commissioner, Surat City, Surat on 10.8.2000 against the petitioner under the PASA Act is hereby quashed and set aside. The petitioner Harshadbhai A.Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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